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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/772,307

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Laurent Bazinet

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OGILVY RENAULT LLP
1981 MCGILL COLLEGE AVENUE
SUITE 1600
MONTREAL, QC H3A2Y3
CANADA

EXAMINER

WEIER, ANTHONY J

ART UNIT

PAPER NUMBER

1794

MAIL DATE

DELIVERY MODE

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/772,307	Applicant(s) BAZINET ET AL.	
	Examiner Anthony Weier	Art Unit 1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 December 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5 and 10-16 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5 and 10-16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 4, 5, 10-12, and 14-16 are rejected under 35 U.S.C. 102(b) as being anticipated by Hoogstad.

Hoogstad discloses extracting tea leaves with water at a first temperature of, for example, 25 C for 60 minutes and a second temperature of 70 C for 30 minutes wherein the first and second extractions have been collected. It is considered expected that by using such time and temperature that said catechins as set forth in the instant claims would be provided in the respective extracts (see cols. 1 and 2).

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1, 4, and 10-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Baraldi.

Baraldi discloses a first extraction of a plant material (carob leaf or meal) wherein most of the EGC is removed into the extract wherein the plant material is then

Art Unit: 1794

extracted a second time wherein a number of remaining catechins are removed including EGCG (see Table 1), said plant material extracted with hot water. It should be further noted that Baraldi further discloses performing the first extraction for 15 minutes and the second extraction in the same manner (see Example; paragraph 15).

With respect to claims 14, it is noted that Baraldi discloses preparation of a first extract that is enriched in EGC (see Table 1, under "Carob Meal").

The claims further call for the temperatures and particular times (e.g. claim 13) employed during the first and second extracts. Although Baraldi discloses the extractions being conducted with hot water (paragraph 15), there is no specific recitation of the temperature employed. Moreover, although Baraldi et al does disclose extraction for 15 minutes in each extraction step (see above), there is no specific reference to 10 minutes extractions as called for in claim 13. It should be noted, however, that claim 1 of Baraldi is not limited to any extraction times. Such determinations of time and temperature would have been well within the purview of a skilled artisan, and, absent a showing of unexpected results, it would have been obvious to one having ordinary skill in the art at the time of the invention to have arrived at such time and temperature values through routine experimentation by extracting with different hot water temperatures and times.

It should be further noted that employing 65 C, one of the temperatures recited in the instant claims, as the particular temperature for extraction (a value well within the range of temperatures encompassed by the term "hot water" in the art; see recited prior art and discussion below in Response to Applicant's Arguments), it is inherent that at

least EGC and EGCG would be extracted in the first and second extractions, respectively.

4. Claims 3 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hoogstad.

Claim 3 further call for the particular type of leaf tea to be used. Although Hoogstad discloses black tea in an example, same otherwise recites tea leaf in a general, and it is expected that any tea leaf is intended to be used in said invention. Nevertheless, white and green tea leaves are notoriously well known, and it would have been obvious to one having ordinary skill in the art at the time of the invention to have employed either such tea leaf as a matter of preference depending on, for example, what tea is available or cheapest for processing.

Claim 13 further calls for the particular times employed during the first and second extracts. Hoogstad discloses the use of extraction times of 5-100 minutes (col. 2). Such determination of extraction time would have been well within the purview of a skilled artisan, and, absent a showing of unexpected results, it would have been obvious to one having ordinary skill in the art at the time of the invention to have arrived at such time through routine experimentation using different extraction times to achieve an optimum result.

Response to Arguments

5. Applicant's arguments filed 12/18/07 have been fully considered but they are not persuasive.

Applicant argues that Baraldi discloses the use of a single temperature for

Art Unit: 1794

extracting catechins contrary to the instant invention. However, it should be first noted that the instant claims provide first and second extraction temperature ranges that overlap. In other words, the instant claims provide for an instance of performing the two extractions at 65 C. There is nothing specifically set forth in the instant claims that requires the first and second temperature to be different. Nevertheless, even if it was required in the claims that the temperatures merely be different, such close proximity of the two ranges would read on two different temperatures that would be within a reasonable range of error or fluctuation, say 0.25 C. That being said, it should be noted that Baraldi is not limited to the use of the same temperature in both extractions. See, for example, the broad scope of claim 1 in Baraldi. Although there is a reference to using the same conditions for both extractions as a preferred embodiment (see paragraph 15), there is broader language elsewhere in the specification that does not specify the particular temperature that must be used in the second extraction (see paragraph 14 and the last sentence of Example 1).

Applicant argues that Baraldi is silent regarding the particular temperature other than to mention that hot water is used "which corresponds to a temperature of about 80 C." It should be noted that Applicant does not appear to provide support for the assertion that "hot water" corresponds to such specific temperature. On the contrary, the term "hot water" in the plant extraction art refers to a significant range of temperatures that encompass, for example, 65 C as recited in the instant claims. For example, Hara refers to hot water extraction at 40-100 C (e.g. col. 2, lines 25-28). Lunder discloses hot water temperature of 60-130 C (e.g. Abstract). Cirigliano et al

recites hot water as being 140 F to 210 F (65 C is about 149 F; see claim 6, step (a)).

Applicant's arguments regarding Mishkin et al are convincing and this reference has been withdrawn, particularly since the temperatures employed therein are significantly different from those recited in the claims.

All other arguments have been addressed in view of the rejections as set forth above.

Conclusion

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. In particular, it should be noted that claim 2 now provides an embodiment not previously claimed wherein leaf *tea* is specifically treated via claim 1 at particularly temperatures. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anthony Weier whose telephone number is 571-272-1409. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Anthony Weier
Primary Examiner
Art Unit 1761

/Anthony Weier/
Primary Examiner, Art Unit 1794

Anthony Weier
March 14, 2008

Application/Control Number: 10/772,307
Art Unit: 1794

Page 8